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FEDERAL COGNIZANCE OF THE ACTS OF LYNCHERS.—The extent of federal jurisdiction under the Thirteenth and Fourteenth Amendments has been presented recently in a new form by a case in the circuit court for the northern district of Alabama. *Ex parte Riggins* (1904) 134 Fed. 404. The petitioner was one of a party that lynched a negro charged with murder. He was indicted under U. S. Rev. St. § 5508, relating to the deprivation of rights secured by the federal constitution and laws. The court held that by the act of lynching the deceased was deprived of rights under both the Thirteenth and Fourteenth Amendments.

In considering the extent of the prohibition of the Thirteenth Amendment, the Supreme Court in the *Civil Rights Cases* (1883) 109 U. S. 3, 22, 23, speaks of lack of standing in a court of justice as an incident of slavery, and of the infliction of severer punishments on slaves than on free persons, but declares that it would not be within the prohibition of the amendment if the state should allow persons who have committed certain crimes to be seized and hung by the posse comitatus without regular trial. It seems difficult to believe that a prohibition against slavery is a prohibition against lynching. Moreover, while the amendment had as its primary object the emancipation of the colored race, it applies to all races, even the white race. *Slaughter House Cases* (1872) 16 Wall. 36, 72; *In re Sah Quah* (1886) 31 Fed. 327, and see the *Peonage Cases* (1903) 123 Fed. 671. If it would be violative of the amendment to lynch a negro at the south, it would be equally violative to lynch a white man at the north. It is inconceivable that the federal courts would declare the lyncher of a white man at the north to be instituting slavery.

The court in determining that rights under the Fourteenth Amendment were violated, declared that that amendment put a duty on the state to afford due process, and that the petitioner by preventing the state from so doing, interfered with the deceased's rights. The Supreme Court in the *Civil Rights Cases*, supra, having under consideration the clause in the amendment relating to the equal protection of the laws, held that protection was given thereby only against state action, not against individual oppression. It is not apparent why a different interpretation should be put upon the provision for due process. In *United States v. Cruikshank* (1875) 92 U. S. 542, the court seems to have decided the precise point though in a somewhat summary manner, holding that an indictment founded on § 5508 charging the defendants with depriving citizens of life and liberty without due process, was nothing else than an allegation of a conspiracy to falsely imprison or murder, and stated no offence cognizable by a federal court. The provisions in the constitution for due process of law were taken from the English law and in this country as there, were intended as safeguards against the arbitrary exercise of the powers of government. *Dent v. West Virginia* (1889) 129 U. S. 114; *Caldwell v. Texas* (1891) 137 U. S. 692. Not only the origin of the provision for due process but its form indicates its nature. It is not a command to the states to give due process but a command not to take life, liberty, or property unless due process is given; not a command to act but to refrain from acting. It would seem that the right of the deceased under the amendment was not violated when the state not only did not do the act, but resisted it and

was overpowered. The extension of the Fourteenth Amendment to cover the facts here presented, is open to the same objection as in the case of the Thirteenth Amendment. Like the Thirteenth, the Fourteenth is not restricted to discriminations against the negro race. It protects all persons without regard to race, and has even been held to extend to corporations. *Pembina Mining Co. v. Pennsylvania* (1888) 125 U. S. 181; *County of Santa Clara v. Southern Pacific R. Co.* (1883) 18 Fed. 385; *In re Tiburcio Parrott* (1880) 1 Fed. 481. Any interference by one with the life, liberty, or property of another because of the commission by that other of a criminal offence would, equally with the acts done in the principal case, be a matter of federal cognizance. It is difficult to believe that any such radical extension of federal jurisdiction can or will be upheld.

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CRIMINAL TRIAL BY A DE FACTO JURY.—As the organization of the the common law jury was simple, the main grounds for objecting to the array were partiality and interest. Duncombe, *Trial per Pais* (7th ed.) p. 141. These being serious objections, the courts were inclined to regard all objections as equally serious. Wharton, *Crim. Pl. & Pr.* (8th ed.) § 886; *O'Connell v. The Queen* (1844) 11 Cl. & F. 155. But the summoning and impanelling of the present day jury is a complex matter and the courts refuse to entertain objections based on irregularities in its organization unless they tend to prejudice the rights of the parties. *State v. Neagle* (1876) 65 Me. 468. The statutory provisions as to its organization are directory, *State v. Matthews* (1885) 88 Mo. 121, being intended to provide an efficient machinery for organization. *Friery v. The People* (N. Y. 1866) 2 Keyes 452. So long as the defendant secures the impartial jury guaranteed him, he may not avail himself of even the most culpable irregularities. *Ferris v. The People* (N. Y. 1866) 31 How. Pr. 140. This rule of expediency, although generally accepted, is open to objection as tending to minimize the rights of the defendant. *Commonwealth v. Hoofneagle* (Pa. 1810) 1 Brown 201, note. *Burley v. The State* (1869) 1 Neb. 385. This criticism is of particular interest in connection with the recent holding of the Court of Appeals that a capital conviction could not be set aside on the ground that the statute providing for the organization of the jury contravened Art. III § 18 of the state constitution. *People v. Ebel* (N. Y. 1905) 73 N. E. 235.

The decision rests upon the authority of *People v. Petrea* (1883) 92 N. Y. 128, and justification is sought upon two grounds. First, that the jury being a de facto body, its legality was not open to collateral attack; and second, that the defendant, having been convicted by an impartial body of men carefully chosen, has not been prejudiced. But the first point is untenable since, jurymen not being officers, *State v. Bradley* (1881) 48 Conn. 535, the law as to de facto officers has no application to them. *Bruner v. The Court* (1891) 92 Cal. 239. The second argument confuses the moral and legal issues. The defendant is presumably innocent until found guilty by due process of law. The state constitution (Art. 1 § 2) declares due process to be trial by jury. Can it be said that a body of men, not